

AGREEMENT FOR SERVICES
by and between the
CITY OF SANTA CLARA, CALIFORNIA,
and
TopDown Consulting, Inc.

PREAMBLE

This agreement for the performance of services ("Agreement") is made and entered into on this _____ day of _____, 2008, ("Effective Date") by and between TopDown Consulting, Inc., a California corporation with its primary business address at 236 West Portal Avenue, #390, San Francisco, CA 94127 ("Contractor"), and the City of Santa Clara, California, a chartered California municipal corporation with its primary business address at 1500 Warburton Avenue, Santa Clara, California 95050 ("City"). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties" or the "Parties to this Agreement."

RECITALS

- A. City desires to secure professional services more fully described in this Agreement;
- B. Contractor represents that it, has the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and,
- C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT PROVISIONS

1. EMPLOYMENT OF CONTRACTOR.

City hereby employs Contractor to perform services set forth in this Agreement. To accomplish that end, City may assign a Project Manager to personally direct the Services to be provided by Contractor and will notify Contractor in writing of City's choice. City shall pay for all such materials and services provided which are consistent with the terms of this Agreement.

2. SCOPE OF SERVICES TO BE PROVIDED.

Except as specified in this Agreement, Contractor shall furnish all technical and professional services, including labor, material, equipment, transportation, supervision and expertise (collectively referred to as "Services") to satisfactorily complete the work required by City at his/her own risk and expense. Services to be provided to City are more fully described in Exhibit A entitled "SCOPE OF SERVICES." All of the exhibits referenced in this Agreement are attached and are incorporated by this reference.

3. COMMENCEMENT AND COMPLETION OF SERVICES.

- A. Contractor shall begin providing the services under the requirements of this Agreement upon receipt of written *Notice to Proceed* from City. Such notice shall be deemed to have occurred three (3) calendar days after it has been deposited in the regular United States mail or upon Contractors receipt of such Notice to Proceed via email or facsimile. Contractor shall complete the Services within the time limits set forth in the Scope of Services or as mutually determined in writing by the Parties.
- B. When City determines that Contractor has satisfactorily completed the Services, City shall give Contractor written *Notice of Final Acceptance*. Upon receipt of such notice, Contractor shall not incur any further costs under this Agreement. Contractor may request this determination of completion be made when, in its opinion, the Services have been satisfactorily completed. If so requested by the contractor, City shall make this determination within ten (14) days of its receipt of such request. If Contractor has not received Notice of Final Acceptance within fourteen (14) days of request, the Services shall be deemed satisfactorily completed.

4. COMPENSATION AND PAYMENT TO CONTRACTOR.

- A. In consideration for Contractor's complete performance of the Services, City shall pay Contractor for all Services rendered by Contractor in accordance with the rate per hour for labor and cost for business travel expenses, billed separately, and as outlined in Exhibit B entitled "Fee Schedule." The payments made by City under this Agreement will be the amounts charged for Services provided and billed by Contractor, pursuant to the hourly rates set forth in the Fee Schedule supplied in writing by Contractor and maintained on file with City at the time the Services are provided.
- B. Contractor shall bill City for the Services and expenses based on the milestone schedule included in Exhibit B. Payment to Contractor for Services will be made within thirty (30) days of City's receipt of invoice.

Taxes. All fees payable under this Agreement are net amounts and are payable in full. Contractor will not deduct for any sales, use, excise, value-added, withholding or any similar taxes or duties that may be applicable to City's purchase of Services from Contractor or third party software licenses. City will be responsible for, and will promptly pay, all taxes and duties of any kind associated with this Agreement, except for taxes based on Contractor's net income.

5. TERM OF AGREEMENT.

Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on the Effective Date of this Agreement and terminate on September 30, 2009.

6. NO ASSIGNMENT OF AGREEMENT/SUCCESSORS IN INTEREST.

This Agreement is a contract for professional services. City and Contractor bind themselves, their partners, successors, assigns, executors and administrators to all covenants of this Agreement. Except as otherwise set forth in this Agreement, no interest in this Agreement or any of the work provided for under this Agreement shall be assigned or transferred, either voluntarily or by operation of law, without the prior written approval of City. However, claims for money due to or to become due to Contractor from City under this Agreement may be assigned to a bank, trust company or other financial institutions, or to a trustee in bankruptcy, provided that written notice of any such assignment or transfer shall be first furnished to City. In case of the death of one or more members of Contractor's firm, the surviving member or members shall complete the Services covered by this Agreement. Any such assignment shall not relieve Contractor from any of its obligations or liability under the terms of this Agreement.

7. NO THIRD PARTY BENEFICIARY.

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

8. SUBCONTRACTING.

Some of the Services provided under this Agreement may be performed by subcontractors and such subcontractors will be specifically identified by Contractor and prior notice given to City in writing. Any substitution of the consultants if indicated in Exhibit A will be agreed to in writing. Any substitution of the consultants after start of the engagement will require advance written notice by Contractor.

9. CONTRACTOR IS AN INDEPENDENT CONTRACTOR.

It is agreed that in performing the work required under this Agreement, Contractor and any person employed by or contracted with Contractor to furnish labor and/or materials under this Agreement is not an agent nor employee of City. Contractor has full rights to manage its employees subject to the requirements of the law.

10. NO PLEDGING OF CITY'S CREDIT.

Under no circumstances shall Contractor have the authority or power to pledge the credit of City or incur any obligation in the name of City. Contractor shall save and hold harmless the City, its City Council, its officers, employees, boards and commissions for expenses arising out of any unauthorized pledges of City's credit by Contractor under this Agreement.

11. CONFIDENTIALITY OF MATERIAL.

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Contractor and all other written information submitted to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor and shall not, without the prior written consent of City, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential.

For purposes of this Agreement, "Contractor Confidential Information" means any technical or business information disclosed by Contractor to City that: (i) if disclosed in writing, is marked "confidential" or "proprietary" at the time of such disclosure; or(ii) if disclosed orally, is identified as "confidential" or "proprietary" at the time of such disclosure. City agrees to maintain Contractor's Confidential Information in confidence using at least the same degree of care to protect such Contractor Confidential Information as it uses for its own information of similar importance, but in all events at least a reasonable degree of care. City agrees not to use Contractor's Confidential Information for any purpose except as necessary for the performance of this Agreement.

12. OWNERSHIP OF MATERIAL.

All material, including information developed on computer(s), which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City but Contractor may retain and use copies thereof. City shall not be limited in any way or at any time in its use of said material. However, Contractor shall not be responsible for damages resulting from the use of said material for

work other than Project, including, but not limited to, the release of this material to third parties. Notwithstanding the foregoing, Contractor will retain all right, title and interest in and to any data, software programs, tools, specifications, templates, scripts, ideas, concepts, inventions, works of authorship, products, know-how, processes, and techniques used or developed by Contractor or its employees or subcontractors prior to and outside of the performance of its services hereunder

13. USE OF CITY NAME OR LOGO.

Contractor shall not use City's name, insignia or distribute exploitative publicity pertaining to the services rendered under this Agreement in any magazine, trade paper, newspaper or other medium without the express written consent of City.

14. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR.

City, through its authorized employees, representatives or agents shall have the right during the term of this Agreement and for three (3) years from the date of final payment for goods or services provided under this Agreement, to audit the books and records of Contractor for the purpose of verifying any and all charges made by Contractor in connection with Contractor compensation under this Agreement, including termination of Contractor. Contractor agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City.

Contractor shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Contractor agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to Contractor's Services hereunder.

15. QUALIFICATIONS OF CONTRACTOR - STANDARD OF WORKMANSHIP.

Contractor represents that its personnel are qualified to furnish services in the form of labor and materials of the type and quality which City requires and that Contractor agrees to perform all work in accordance with generally accepted business practices and performance standards of the industry. City expressly relies upon Contractor's representations regarding its skills and knowledge. City shall restrict its service requests to those projects which are within the skill and capability levels of Contractor and its employees.

The plans, designs, specifications, estimates, calculations, reports and other documents furnished under Exhibit A shall be of a quality acceptable to City. The criteria for acceptance of the work provided under this Agreement shall be a product of neat appearance, well-organized, technically and grammatically correct, checked and having the maker and checker identified.

16. MONITORING AND EVALUATION OF SERVICES.

City may monitor the Services performed under this Agreement to determine whether Contractor's operation conforms to City policy and to the terms of this Agreement. City may also monitor the Services to be performed to determine whether financial operations are conducted in accordance with applicable City, county, state and federal requirements. If, in the course of monitoring and evaluation, City believes it has discovered any practice, actions, procedure or policy of Contractor which deviates from the terms of this Agreement, City may notify Contractor in writing and Contractor agrees to respond in writing to City within seven (7) calendar days regarding such action, procedure or policy. However, if any action of Contractor constitutes a breach of this Agreement, City may notify Contractor in writing that the Agreement has been terminated pursuant to the provisions set forth in this Agreement.

17. PERFORMANCE OF SERVICES.

Contractor shall perform all requested services in an efficient and expeditious manner and shall work closely with and be guided by City. Contractor shall be as fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it. Contractor will perform all Services in a safe manner and in accordance with all federal, state and local operation and safety regulations.

Warranty Disclaimer. TopDown makes no warranties and accepts no liability for any third party software (including, without limitation, Hyperion software products and documentation), hardware, or other third party products that are provided with the Services or with which the Services interact. **EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SERVICES, INCLUDING WITHOUT LIMITATION ANY MATERIALS, WORK PRODUCT, OR DELIVERABLES PROVIDED BY TOPDOWN HEREUNDER, ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND. THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT ARE HEREBY EXPRESSLY DISCLAIMED.**

18. CORRECTION OF SERVICES AND LIMITATION OF LIABILITY.

Contractor agrees to correct any incomplete, inaccurate or defective Services at no further costs to City, when such defects are due to the negligence, errors or omissions of Contractor.

NOTWITHSTANDING THE FOREGOING, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS OR PROFITS) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PERFORMANCE OF THE SERVICES, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, AND WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE

POSSIBILITY OF SUCH LOSS OR DAMAGE. CONTRACTOR'S TOTAL LIABILITY TO CITY, FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY, WILL BE LIMITED TO AND WILL NOT EXCEED THE AGGREGATE AMOUNTS PAID TO CONTRACTOR BY CITY UNDER THE STATEMENT OF WORK GIVING RISE TO THE LIABILITY.

19. FAIR EMPLOYMENT.

Contractor shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, gender, sexual orientation, age, disability, religion, ethnic background, or marital status, in violation of state or federal law.

20. HOLD HARMLESS/INDEMNIFICATION.

To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and reasonable attorney's fees in providing a defense to any claim arising therefrom, for which City shall become liable arising from Contractor's negligent, reckless or wrongful acts, errors, or omissions with respect to or in any way connected with the Services performed by Contractor pursuant to this Agreement.

21. INSURANCE REQUIREMENTS.

A. During the term of this Agreement, and for any required time thereafter as set forth below, Contractor shall purchase and maintain in full force and effect, at no cost to City, the following insurance policies:

- 1) commercial general liability policy (bodily injury and property damage);
- 2) comprehensive automobile liability policy;
- 3) workers' compensation and employer's liability policy; and
- 4) professional liability policy.

B. Said policies shall be maintained with respect to employees and vehicles assigned to the performance of work under this Agreement with coverage amounts, required endorsements, certificates of insurance, and coverage verifications as defined in Exhibit C entitled "INSURANCE REQUIREMENTS."

22. AMENDMENTS.

It is mutually understood and agreed that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties and incorporated into this Agreement. Such changes, which are mutually agreed upon by City and Contractor, shall be incorporated in amendments to this Agreement.

23. INTEGRATED DOCUMENT - TOTALITY OF AGREEMENT.

This Agreement embodies the agreement between City and Contractor and its terms and conditions. No other understanding, agreements, conversations, or otherwise, with any officer, agent, or employee of City prior to execution of this Agreement shall affect or modify any of the terms or obligations contained in any documents comprising this Agreement. Any such verbal agreement shall be considered as unofficial information and in no way binding upon City.

24. SEVERABILITY CLAUSE.

In case any one or more of the provisions contained herein shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions which shall remain in full force and effect.

25. WAIVER.

Contractor agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement.

26. NOTICES.

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

Gill Norris
Information Technology Department
City of Santa Clara
1405 Civic Center Drive
Santa Clara, California 95050
or by facsimile at (408) 243-8687

And to Contractor addressed as follows:

Contractor's notice address:
Name: TopDown Consulting, Inc
Address: 236 West Portal Avenue, #390
San Francisco, CA 94127
or by facsimile at (510) 405-8472

If notice is sent via facsimile, a signed, hard copy of the material shall also be mailed. The workday the facsimile was sent shall control the date notice was deemed given if there is a facsimile machine generated document on the date of transmission. A facsimile transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following Monday.

27. CAPTIONS.

The captions of the various sections, paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

28. STATUTES AND LAW GOVERNING CONTRACT.

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California.

29. COMPLIANCE WITH LAWS.

Contractor shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local governments.

30. DISPUTE RESOLUTION.

- A. Unless otherwise mutually agreed to by the Parties, any controversies between Contractor and City regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.
- B. The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.
- C. The costs of mediation shall be borne by the Parties equally.
- D. Mediation under this section is a condition precedent to filing an action in any court. In the event of litigation or mediation which arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit, regardless of the outcome the litigation.

31. VENUE.

In the event that suit shall be brought by either Party, the Parties agree that venue shall be exclusively vested in the state courts of the County of Santa Clara, or where otherwise

appropriate, exclusively in the United States District Court, Northern District of California, San Jose, California.

32. OTHER AGREEMENTS.

This Agreement shall not prevent either Party from entering into similar agreements with others.

33. CONFLICT OF INTEREST.

Contractor certifies that to the best of its knowledge, no City employee or officer of any public agency has any pecuniary interest in the business of Contractor and that no person associated with Contractor has any interest that would conflict in any manner or degree with the performance of this Agreement. Contractor represents that it presently has no interest and shall not acquire any interest, direct or indirect, which could conflict in any manner or degree with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code Section 87100 and following, and certifies that it does not know of any facts which constitute a violation of said provisions. Contractor will advise City if a conflict arises.

34. TERMINATION OF AGREEMENT.

a. Termination Without Cause

Either Party may terminate this Agreement without cause by giving the other Party written notice ("Notice of Termination") which clearly expresses that Party's intent to terminate the Agreement. Notice of Termination shall become effective no less than thirty (30) calendar days after a Party receives such notice. After either Party terminates the Agreement, Contractor shall discontinue further services as of the effective date of termination, and City shall pay Contractor for all Services satisfactorily performed up to such date.

b. Termination For Cause

For purposes of this Agreement, the term "default" shall mean the failure of any Party to perform any material obligation in the time and manner provided by this Agreement. Either Party may terminate this Agreement in the event of a default by the other Party by providing a written Notice of Termination to the defaulting Party. Such Notice of Termination shall become effective no less than ten (10) calendar days after a Party receives such notice. Such Notice of Termination for cause shall include a statement by the terminating Party setting forth grounds for determination of default under the Agreement. In the event this Agreement is terminated for cause as set forth under this section, City shall pay Contractor for all Services satisfactorily performed up to the date the Agreement is terminated. City may deduct from such payment the amount of actual damage, if any,

sustained by City due to Contractor's failure to perform the Services or for breach of this Agreement.

c. Opportunity To Cure Default

Upon receipt of a Notice of Termination by a Party arising from its default under this Agreement, the defaulting Party shall have five (5) days from the receipt of such notice to cure the default by making such payment or performing the required obligation. If the default is cured to the mutual satisfaction of the Parties, the Agreement shall remain in effect upon written acceptance of the cure by the Party who issued the Notice of Termination for cause.

35. COMPLIANCE WITH ETHICAL STANDARDS.

As a condition precedent to entering into this Agreement, Contractor shall:

- a. Read the attached Exhibit D entitled "ETHICAL STANDARDS," and,
- b. Execute the affidavit attached as Exhibit E entitled "AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS."

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

(Signatures continue on page 12)

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:

HELENE L. LEICHTER
City Attorney

ATTEST:

ROD DIRIDON, JR.
City Clerk

JENNIFER SPARACINO
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"City"

TopDown Consulting, Inc.
a Corporation

By: _____
(Signature of Person executing the Agreement on behalf of Contractor)

Mike Davies

(Please Print or Type Name)

Title: COO

Local Address: 236 West Portal Avenue, #390
San Francisco, CA 94127

Telephone: (888) 644- 8445

Fax: (510) 405-8472

AGREEMENT FOR SERVICES
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EXHIBIT A
SCOPE OF SERVICES

The following Scope of Goods/Services is to be provided to City by TopDown Consulting under this Agreement:

This EXHIBIT A includes the work to be done by TopDown Consulting in connection with the upgrade / implementation of Hyperion Planning and Hyperion Workforce Planning.

1. SCOPE OF SERVICES FOR HYPERION PLANNING & WORKFORCE PLANNING IMPLEMENTATION.

A. This scope of services includes the following:

- Upgrade to Hyperion Planning System 9
- Migration of existing Planning application to version 9.3.1
- Implementation of "out-of-the-box" Workforce Planning (WFP) and Smart View
-

TopDown Responsibilities

- Upgrade to Hyperion Planning System 9
 - 1. Install Hyperion Planning and Workforce Planning – 5 days (Technical Consultant)
- Migrate Existing Application – 15 days
 - 1. Migrate Application (1 application) – 2 days (Technical Consultant)
 - 2. Migrate Existing Business Rules – 2 days .
 - 3. Rules build to include transfer of existing employee related calculations to WFP and no customization of WFP module
 - 4. Migrate Data – 1 day – does not include user data verification .
 - 5. Migrate Security – 1 day.
 - 6. Rollout Support – 2 days – as needed
 - 7. Knowledge Transfer – 1 day – side-by-side knowledge transfer
 - 8. Documentation – 2 days.
 - 9. Migrate Existing Hyperion Application Link (HAL) routines for loading metadata and extracting adopted budget data.
- Workforce Planning and Smart View– 20 days (does not include any net new development/functionality)
 - 1. Project Management – 4 days
 - 2. Design session and documentation – 4 days including design document. Design session to be 2 full days of meeting with all of key project team

3. Build – 4 days
4. Calculations – 3 days
5. Test – 2 days
6. Train – 1 day
7. Documentation – 1 day
8. Rollout – 1 day
9. Knowledge Transfer – 4 days – side-by-side knowledge transfer including Smart View.

City Responsibilities (in conjunction with TopDown Team)

- Project Management
- Make available all key stakeholders
- Purchase hardware
- Testing
- Data verification
- Excel add-ins spreadsheets as needed
- Report development
- Security development.
- End user training

Change Management is the process through which SoW modifications are identified, documented, evaluated, and adopted or rejected. “Changes” include modifications to the timeline, resource requirements, deliverables, or changes in responsibilities as described in this SoW, or any other change that requires additional Services or expenses to be provided by Consultant. Upon receipt of a Change request from City’s authorized representative, Consultant will provide a written estimate of the fees required to implement the requested Change. Upon the mutual execution of a written Change order, Consultant will implement the requested Change. Unless otherwise specifically described in the Change order form, all Services provided as part of a requested Change will be chargeable to City pursuant to the terms and conditions contained herein.

B. IMPLEMENTATION SCHEDULE

The project plan will be finalized at the time the design document is created.

Progress Meetings will be held weekly by conference call or on-site as appropriate.

The TopDown project manager will issue a progress report to the City project manager. The reporting will cover progress made in the implementation and on materials ordered, received and delivered.

An escalation path will be followed in case of slippage in the schedule. All schedule achievement problems will be clearly identified in the progress report and the proposed solutions discussed and documented in the status meetings.

C. ALLOCATION OF RESOURCES

Based on the agreed schedule, TopDown will allocate personnel to ensure that all deliverables are available according to the plan. A personnel plan will be part of the project plan.

D. DELIVERY AND INSTALLATION

The City will purchase hardware and software for this implementation with TopDown's guidance. The City's responsibilities are to order, receive and install the hardware.

E. MILESTONE SCHEDULE

Duration	Event	Resource Name / Location
1 Day	1. Notice to proceed (Contract Signing)	
Milestone 1 – Installation and Design		
5 Days	Installation/Software Upgrade	On-Site
2.5 Days	Requirements Analysis	On-Site
2.5 Days	Design	On-Site
Milestone 1 deliverable: Design Document		
Milestone 2 – Build		
20 Days	Existing Application Migration Business Rules HAL Meta Data loads HAL PS Extract Reports Migration Workforce Planning Integration/System Test	On-Site
Milestone 3 - Deployment		
5 Days	Training Production Build User Test	On-Site
Milestone 4 – Post Production Support		
5 Days	Rollout Support for CIP and Operating Budget	On-Site

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EXHIBIT B
FEE SCHEDULE

The Services are priced on a time and material basis in accordance with the hourly rates set forth below:

Software Upgrade to Sys 9	Technical Consultant 40 hrs @ \$265/hr	\$10,600
Application Migration	Application Consultant 120 hrs @ \$225/hr	\$27,000
Workforce Planning Module	Application Consultant 160 hrs @ \$225/hr	\$36,000

City will reimburse Consultant for all reasonable expenses (including travel) incurred in performance of the Services, including, without limitation, travel and lodging incurred by Contractor's employees and subcontractors when performing Services at City's sites. Contractor will adhere to the TopDown Travel Guidelines for domestic and international travel expenses. Such reasonable expenses shall be estimated at approximately 10%, not to exceed \$7,500.00. Contractor shall minimize air travel and will fly economy class for all US travel and business class for all non-domestic flights. Meals shall be reimbursed at the actual costs. An itemized breakdown of expenses shall be provided upon request.

Contractor Overtime Policy. Contractor's consultant(s) shall perform the work efforts during the City's normal business hours Monday through Friday based on a forty (40) hour work week. Any additional support requested may be conditioned upon a SoW Change Order as set forth below, and may be subject to additional terms and conditions for On-Call support Services.

In no event will the amount billed by Contractor under this agreement exceed \$81,100.00, subject to budget appropriations.

Milestone	%	Payment Amount
1 - Installation & Design	25%	\$18,400.00
2 - Build	50%	\$36,800.00
3 - Deployment	10%	\$7,360.00
4 - Post Production Support	15%	\$11,040.00
Totals -		\$73,600.00

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EXHIBIT C
INSURANCE REQUIREMENTS

Without limiting the Consultant's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Consultant shall purchase and maintain in full force and effect during the period of performance of the Agreement and for twelve (12) months following acceptance by the City, at its sole cost and expense, the following insurance policies from insurance companies authorized to do business in the State of California. These policies shall be primary insurance as to the City of Santa Clara so that any other coverage held by the City shall not contribute to any loss under Consultant's insurance. The minimum coverages, provisions and endorsements are as follows:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$1,000,000 Each Occurrence
\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal Injury

2. Exact structure and layering of the coverage shall be left to the discretion of Consultant; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.

3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Consultant to comply with the insurance requirements of this Agreement:

- a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
- b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another; and

- c. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to all owned (if any), non-owned and hired autos.

In the event that the Work being performed under this Agreement involves transporting of hazardous or regulated substances, hazardous or regulated wastes and/or hazardous or regulated materials, Consultant and/or its subcontractors involved in such activities shall provide coverage with a limit of one million dollars (\$1,000,000) per accident covering transportation of such materials by the addition to the Business Auto Coverage Policy of Environmental Impairment Endorsement MCS90 or Insurance Services Office endorsement form CA 99 48, which amends the pollution exclusion in the standard Business Automobile Policy to cover pollutants that are in or upon, being transported or towed by, being loaded onto, or being unloaded from a covered auto.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.

2. The indemnification and hold harmless obligations of Consultant included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).

3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. PROFESSIONAL LIABILITY

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against negligent acts, errors or omissions of the Consultant. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage shall be in an amount of not less than one million dollars (\$1,000,000 per occurrence or two million dollars (\$2,000,000) aggregate. Any coverage containing a deductible or self-retention

must first be approved in writing by the City Attorney's Office. TopDown's deductible is \$25,000.

E. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Consultant's work for City, using an equivalent to the Insurance Services Office (ISO) Endorsement CG 20 10 10 01.
2. Primary and non-contributing. Each insurance policy provided by Consultant shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance indemnities may possess shall be considered excess insurance only and shall not be called upon to contribute with Consultant's insurance.
3. Cancellation.
 - (a) Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
 - (b) Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.
4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Exhibit C, above.

F. ADDITIONAL INSURANCE RELATED PROVISIONS

Consultant and City agree as follows:

1. Consultant agrees to ensure that subcontractors, and any other party involved with the Services, who is brought onto or involved in the performance of the Services by Consultant, provide the same minimum insurance coverage required of Consultant, except as with respect to limits. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Consultant agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Consultant agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Consultant for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
3. The City reserves the right to withhold payments from the Consultant in the event of material noncompliance with the insurance requirements set forth in this Agreement.

G. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Consultant, and each and every subcontractor (of every tier) shall, at its sole cost and expense, purchase and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Consultant shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

H. EVIDENCE OF COMPLIANCE

Consultant or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Consultant shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

City of Santa Clara [insert City department name here]

c/o Insurance Data Services - Insurance Compliance
P.O. 12010-S2 or 151 North Lyon Avenue
Hemet, CA 92546-8010 Hemet, CA 92543
Telephone: (951)766-2280; or
Fax: (951)766-2299

I. QUALIFYING INSURERS

All of the insurance companies providing insurance for Consultant shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives

AGREEMENT FOR SERVICES
by and between the
CITY OF SANTA CLARA, CALIFORNIA
and
TopDown Consulting, Inc.

EXHIBIT D
ETHICAL STANDARDS

Termination of Agreement for Certain Acts.

- A. The City may, at its sole discretion, terminate this Agreement in the event any one or more of the following occurs:
1. If a Contractor¹ does any of the following:
 - a. Is convicted² of operating a business in violation of any Federal, State or local law or regulation;
 - b. Is convicted of a crime punishable as a felony involving dishonesty.³
 - c. Is convicted of an offense involving dishonesty or is convicted of fraud or a criminal offense in connection with: (1) obtaining; (2) attempting to obtain; or (3) performing a public contract or subcontract;
 - d. Is convicted of any offense which indicates a lack of business integrity or business honesty which seriously and directly affects the present responsibility of a City contractor or subcontractor; and/or,
 - e. Made (or makes) any false statement(s) or representation(s) with respect to this Agreement.

¹ For purposes of this Agreement, the word "Contractor" (whether a person or a legal entity) means any of the following: an owner or co-owner of a sole proprietorship; a person who controls or who has the power to control a business entity; a general partner of a partnership; a principal in a joint venture; or a primary corporate stockholder [i.e., a person who owns more than ten percent (10%) of the outstanding stock of a corporation] and who is active in the day to day operations of that corporation.

² For purposes of this Agreement, the words "convicted" or "conviction" mean a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere within the past five (5) years.

³ As used herein, "dishonesty" includes, but is not limited to, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, failure to pay tax obligations, receiving stolen property, collusion or conspiracy.

2. If fraudulent, criminal, or other seriously improper conduct of any officer, director, shareholder, partner, employee, or other individual associated with the contractor can be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the Contractor, with the Contractor's knowledge, approval or acquiescence, the contractor's acceptance of the benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.
- B. The City may also terminate this Agreement in the event any one or more of the following occurs:
1. If the City determines that Contractor no longer has the financial capability⁴ or business experience⁵ to perform the terms of, or operate under, this Agreement; or
 2. If the City determines that the Contractor fails to submit information, or submits false information, which is required to perform or be awarded a contract with City, including, but not limited to, contractor's failure to maintain a required state issued license, failure to obtain a City business license (if applicable), or failure to purchase and maintain bonds and/or insurance policies required under this Agreement.
- C. In the event a prospective Contractor (or bidder) is ruled ineligible (debarred) to participate in a contract award process, or a contract is terminated pursuant to the these provisions, Contractor may appeal the City action to the City Council by filing a written request with the City Clerk to have the matter heard within ten (10) days of the notice given by the City. The matter will be heard within thirty (30) days of the filing of the appeal request with the City Clerk. The Contractor will have the burden of proof on the appeal. The Contractor shall have the opportunity to present evidence, both oral and documentary, and argument.

⁴ Contractor becomes insolvent, transfers assets in fraud of creditors, makes an assignment for the benefit of creditors, files a petition under any section or chapter of the federal Bankruptcy Code [11 U.S.C.], as amended, or under any similar law or statute of the United States or any state thereof, is adjudged bankrupt or insolvent in proceedings under such laws, or a receiver or trustee is appointed for all or substantially all of the assets of Contractor.

⁵ Loss of personnel deemed essential by the City for the successful performance of the obligations of the Contractor to the City.

AGREEMENT FOR SERVICES
by and between the
CITY OF SANTA CLARA, CALIFORNIA
and

TopDown Consulting, Inc.

EXHIBIT E

AFFIDAVIT OF COMPLIANCE WITH ETHICAL STANDARDS

I, _____, being first duly sworn, depose and state I am _____ (title or capacity) of _____ (entity name) and I hereby state that I have read and understand the language, entitled "Ethical Standards" set forth in Exhibit D. I have the authority to make these representations on my own behalf or on behalf of the legal entity identified herein. I have examined appropriate business records, and I have made appropriate inquiry of those individuals potentially included within the definition of "Contractor" contained in Ethical Standards at footnote 1.

Based on my review of the appropriate documents and my good-faith review of the necessary inquiry responses, I hereby state that neither the business entity nor any individual(s) belonging to said "Contractor" category [i.e., owner or co-owner of a sole proprietorship, general partner, person who controls or has power to control a business entity, etc.] has been convicted of any one or more of the crimes identified in the Ethical Standards within the past five (5) years.

The above assertions are true and correct and are made under penalty of perjury under the laws of the State of California.

[*Contractor]

a Sole Proprietor

By:

Signature of Authorized Person or Representative

Name:

Title:

NOTARY'S ACKNOWLEDGMENT TO BE ATTACHED

Please execute the affidavit and attach a notary public's acknowledgment of execution of the affidavit by the signatory. If the affidavit is on behalf of a corporation, partnership, or other legal entity, the entity's complete legal name and the title of the person signing on behalf of the legal entity shall appear above. Written evidence of the authority of the person executing this affidavit on behalf of a corporation, partnership, joint venture, or any other legal entity, other than a sole proprietorship, shall be attached.